

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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| Illinois Commerce Commission |) | |
| On Its Own Motion |) | |
| |) | 02-0844 |
| Amendment of 83 Ill.Adm.Code 551 |) | |

PEOPLES ENERGY SERVICES CORPORATION
REPLY TO BRIEFS ON EXCEPTIONS

Pursuant to 83 Illinois Administrative Code Section 200.830, Peoples Energy Services Corporation ("PE Services"), by one of its attorneys, Timothy P. Walsh, hereby submits this Reply to Briefs on Exceptions ("RBOE") to the Administrative Law Judge's Proposed Order ("ALJPO") in the above-entitled cause which was served on August 11, 2003. PE Services took no exception to the ALJPO and therefore did not file a Brief on Exceptions ("BOE"). Only the Staff of the Illinois Commerce Commission ("Staff") filed BOE and PE Services takes great exception to Staff's proposed additional language concerning disputed bills under Section 551.70(b)(6) to both the Commission's Analysis section of the ALJPO and proposed Part 551.

Introduction

Initially, PE Services notes that Staff did not properly show substitute language as required under Section 280.830(b), rather Staff indicates that it is completely replacing the language from the ALJPO. Staff actually proposes the following change to Section 551.70(b)(6):

- 6) The alternative gas supplier shall file wit the Commission and maintain procedures addressing the manner in which any disputed amount for which a residential or small commercial customer is billed may be resolved,; stating that while the dispute is pending, the disputed amount shall not be included in the amount that must be paid by the due date.

‡The customer shall pay the undisputed portion of the bill or an amount equal to last year's bill at the same location for the same period,

normalized for weather, calculated using the formula based on the components of the supplier's offer and stated in the supplier's dispute resolution procedures filed with the Commission, whichever is greater. Any disputed amount in excess of last year's bill for the same address adjusted for weather shall not be included in the amount that must be paid by the due date. While a dispute pertaining to an unauthorized change of supplier is pending, the customer shall not be responsible for paying any amount billed by the supplier except charges for delivery services if the supplier issues a single bill. If the utility issues a single bill, the supplier shall notify the utility of the change of supplier dispute as soon as the supplier is aware of the customer's allegations. On the first day of each quarter, alternative gas suppliers shall provide to the Commission's Consumer Services Division a detailed dispute report including the name and address of the customer alleging the unauthorized change of supplier, the name of the local distribution company involved, and a description of the complaint and its resolution.

The alternative gas supplier shall ~~is required to~~ inform its customers how to contact the Commission's Consumer Services Division to pursue an unresolved dispute. The alternative gas supplier's billing statements shall include a toll-free number and other means by which a customer may contact it with inquiries or complaints.

Therefore, Staff proposes the following substantive and burdensome changes to the rule:

1. AGS will have to file a formula with the Commission for calculating the disputed amount of a bill. According to Staff's proposed text of the Commission's Analysis, the formula will be subject to Staff review.
2. Under certain dispute conditions Staff proposes that no payment shall be due from a customer to an AGS. Additionally, depending on how the customer is billed, Staff proposes different handling and notification procedures.
3. Staff also proposes AGS meet a new quarterly reporting requirement.

PE Services objects to Staff's proposed language and charges on both procedural and substantive grounds.

Procedural Objection to Staff's Proposed Language

PE Services first objects to Staff's proposed language to Section 551.70(b)(6) concerning billing disputes because the ALJ provided ample opportunity for Staff to suggest such cumbersome and onerous language during the proceeding. Since Staff is suggesting substantive changes not based on the record that it did not propose at the appropriate time in the proceeding other parties would not be allowed responsive comments on the record. Staff should be barred from suggesting new substantive language now since the record was marked "Heard and Taken" on July 10, 2003. See, Commission e-Docket, Docket 02-0844, Docket Sheet, July 10, 2003.

The ALJPO notes that Staff filed two rounds of comments, reply comments and rebuttal comments. Docket No. 02-0844, ALJPO, p. 1. Importantly, Staff also had additional opportunities to address the language it proposes in its BOE when it submitted to the Commission its Staff Report dated December 2, 2002 or in its Response to ALJ's Data Request dated April 17, 2003. The ALJ specifically asked Staff to address these issues in Staff's response to the Data Requests. See, Docket No. 02-0844 Notice of ALJ's Data Request, April 1, 2003.

The ALJ thoroughly considered the disputed billing language and offered an appropriate middle ground to the rule based on the record. Staff should not be allowed to have another bite at the appeal in proposing its new language. The Commission should reject the new language Staff offers after the record has been closed because considering the language would pervert and violate both the Commission's and Illinois procedural rules.

Substantive Objections to Staff's Proposed Language

PE Services also objects substantively to Staff's proposed language on two grounds. First, based on the following position the ALJ took in the ALJPO: "[w]e generally agree with Peoples that there is no compelling reason to have a separate and more expansive disputed payment mechanism applicable only to AGS customers."

Staff ignores the ALJ's language and adds more expansive language than proposed to date.

Second, Staff's principal premise for the need for the additional language is based on an erroneous presumption. In its BOE at page 3 Staff states, "[c]urrent Commission rules pertaining to disputes of gas bills anticipate that the utility will have a record of last year's bill or use its standard estimating procedures that are uniform for all customers in a class including rates and adjustments for weather." The ALJ inserted verbatim at the end of the first sentence of proposed Section 551.70(b)(6) the language from Section 280.160(c)(1). 83 Ill.Adm.Code 280.160(c)(1). The Section 280.160(c) language does not address what type of historical utility billing records were anticipated or what estimating procedures utilities have in place. The Section 280.160 language speaks for itself and has been in place for 20 years. The language applies whether or not a customer disputing a bill received service from the utility the prior year. The exact same language the ALJ proposes for Section 551.70(b)(6) is, therefore, appropriate and already addresses Staff's concerns.

Conclusion

Wherefore, PE Services recommends that the ALJ's Post Exceptions Proposed Order reject *in toto* Staff's proposed language because it is procedurally and substantially inappropriate.

Dated at Chicago, Illinois this 8th day of September 2003.

Respectfully submitted,

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

To: Service List

PLEASE TAKE NOTICE that on this 8th day of September 2003, I have filed with the Chief Clerk of the Illinois Commerce Commission, the Peoples Energy Services Corporation Reply Brief on Exceptions, a copy of which is hereby served upon each of the parties of record in Ill.C.C. Docket No. 02-0844 by placing a copy thereof in the United States mail with first class postage affixed, by e-mail, UPS or personal delivery.

Dated at Chicago, Illinois this 8th day of September 2003.

By _____
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